



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services 12 VAC 30
<b>VAC Chapter Number:</b>	Chapters 10 and 20
<b>Regulation Title:</b>	Provider Appeals
<b>Action Title:</b>	Provider Appeals
<b>Date:</b>	October 13, 2000. NEED ACTION BY NOV. 10/PRIOR ER

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This proposed action will promulgate provider appeal regulations for all provider appeal issues. It also provides for the completion of informal appeals within 180 days and the completion of formal appeals within another 180 days.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §§ 9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency initiated the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 2000. The Code, at § 9-6.14:4.1(C) requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on August 23, 2000.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of this proposal is to promulgate permanent regulations to provide for provider appeals of reimbursement issues. These permanent regulations are not expected to have a direct impact on the public's health, safety, or welfare.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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The sections of the State Plan affected by this action are section 7.5 Provider Reimbursement Appeals (12VAC 30-10-1000) and Provider Reimbursement Appeals (Attachment 7.5) (12 VAC 30-20-500 through 12 VAC 30-20-599). Several existing State Plan sections are also being repealed by this action as they no longer accurately describe the provider appeal process: 12 VAC 30-70-140 through 12 VAC 30-70-145; 12 VAC 30-90-130 through 12 VAC 30-90-133 and 12 VAC 30-90-135.

Presently, the State Plan for Medical Assistance contains language addressing provider appeals via the inpatient hospital reimbursement and the nursing facility reimbursement methodologies. These existing regulations have been superseded in intent and outcome by the passage of House Bill 892 (HB 892) and therefore, are being repealed.

On April 9, 2000, the 2000 General Assembly passed and the Governor enacted, HB 892, which requires the processing of provider appeals within six months at the informal level and within six months at the formal level. If the Department does not meet its statutory time frames, then the appeal decision is deemed to be in favor of the appealing provider, as provided in the new statute. The statute applies to all administrative appeals filed on or after July 1, 2000. In order to conduct these appeals to conclusion within the statutorily set time limits, DMAS must include the various specified time periods in the State Plan for Medical Assistance.

In developing the previous emergency regulations, DMAS conferred with five affected provider organizations: the Virginia Health Care Association (VHCA), the Virginia Association of Non-Profit Homes for the Aging (VANHA), the Virginia Association for Home Care (VAHC), the Virginia Hospital and Healthcare Association (VHHA), and the Medical Society of Virginia. The VHCA commented and also transmitted comments from VANHA and VAHC. The VHCA also provided the draft regulations to two provider attorneys and two provider accountants. DMAS also met with the VHCA to discuss its comments.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

The regulations have no fiscal/budgetary impact because the regulations only address time frames for processing provider appeals. Additionally, these types of general administrative provider appeals have been conducted for years by DMAS, so funding for them is already provided for in the base appropriation. There are no localities that are uniquely affected by these regulations as they apply statewide. Additionally, these regulations have no affect on local Departments of Social Services agencies.

Funding Source/Cost to Localities/Affected Entities: The Department of Medical Assistance Services is established and receives federal financial participation pursuant to Title XIX of the Social Security Act (42 U.S.C. §§ 1396 through 1396v); and Title 32.1, Chapter 10, of the Code of Virginia. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.67%, which became effective October 1, 1999. This rate will increase to 51.85% on October 1, 2000.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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This entire regulation is new text and does not substantially vary from current emergency regulations.

### Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Policy alternatives were discussed with the affected industries during the 2000 General Assembly session.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No public comments were received during the NOIRA comment period.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and easily understandable by the individuals and entities affected.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The Department of Medical Assistance Services, in collaboration with its provider representatives, routinely monitors the implementation of all State Plan issues to assure accurate and appropriate provider reimbursement and service coverage.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulatory action will not have any negative or positive effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities because this action applies to providers' abilities to appeal decisions.